

22 July 1634 Ray contra Baillies of Aberdeen.

Having treated of Public rights to be holden of the Disponer Superior by Resignation or Confirmation these rights holden of the Disponer fall in the next place to be explained.

These base Infeudments required Possession to Complete them for Preventing Latent Simulate and Collusive Rights when there was no Register of Sasines: and the Custom Continued Even after the Recording of Sasines, till the Year 1693. When Infeudments whether public or base, & other with Possession or not, were declared Preferable Records to the priority of the Registration of Sasines Act 13 Sep. 4 Par. 4. & without prejudice still to demand any base Infeudment as Simulate to the behoof of the Disponer or some other than the Receiver, to prove the same by the Receiver both or first Stair 745 1111, § 2 In fine. While a purchaser continues to hold base of the Disponer he cannot be personally bound to believe him of the fees & duty; But the Lands are still liable to the Superior for the same. That answers to Direct. Douts. 50. base Infeudment. Such base Infeudments being handled more fully in another place. See Supra page.

I shall here say some thing about the Confirmation of them. For as Confirmation of an Infeudment given to be held of the Superior (which is null till it be confirmed) is necessary to perfect the Right. So a base Infeudment is some times for the more security confirmed by the Superior.

Confirmation of Rights &c. Me. or base rights, by the Superior, tho' voluntarily granted, doth not Revert them public rights, & make the person whose right is confirmed Immediate Vassal to the Superior Confirming 17 Novemb. 1627 L. Blackmannan contra Burn. Craig Green lib. 2. 57. So that such Confirmation doth not Exclude the Superior from the Casualties Emoluments or profits belonging to him ex Contractu Feudali: As from the Rents of the Lands by the Disponers life rent Escheat, or from the Casualties of ward and Non Entry by his Death, which are Rights that do only Burden the fee or property. But such Confirmation of base rights only hinders the Superior from claiming any Casualty arising to him, thro' deeds of the Vassal wanting his Consent, such as forfeiture or Recognition. Stair

Stair lib. 2. 57. § 15 Vers. there is another kind of Charter & § 28 McKenzie Inst. lib. 2. 57. § 13. Or any other right Destructive of or Inconsistent with the Fee. But a Confirmation of base Infeudments granted by a Vassal to his Feuditors after he was Year and Day at the year, without a Nova-Damus doth not secure the rights confirmed against the Common Debtor's life rent. E. Scheat taken before, the Gifted and Declared after the Confirmation 10 Feb. 1710 Leslie of Kirkcraig contra Creditors of Newcarton Craig. 14 Febr. 1711. By C. Aiton contra Duman. Because non Regatur by the simple Confirmation to Debar the Superior or his Donor from a Casualty already fallen, but only to secure the Feuditor confirmed for thereafter. *Idem* Case, *Idem* *Idem* *Idem*. For the Superior confirms only what the Vassal did, and what right he had, and Disposes nothing of his own Superiority, or any Casualty then or since it fallen. Yet Confirmation of Sasine taken upon a precept in a Disposition obliging to Infeud de Me and a Me by Confirmation, to further or Revert the precept or Infeudment with special Relation, makes it a public right. 15 July 1680 B. Aberdeen S. Kenmore June 1687 Deane contra Deane Corp. 18 Feb. 1688 Lord E. Cameron contra Brown Stair lib. 2. 58 In fine. Because the Sasine was applicable to either Infeudment at the pleasure of the party Infeud.

When Lands are sold, Whitsunday and Martinmas are understood to be the legal terms. If the terms be not required by the Bargain, they will fall to be the same to the Buyer, as to a Compriser: That is, If he buy the Lands before Whitsunday (which is called a Whitsunday's Bargain) he will have the whole Year July; and if before Martinmas (which is termed a Martinmas Bargain) the half year only. But what Sir John Abbot says, that a Bargain made after Martinmas before Sand Lismass the ordinary term of payment of Victuals, should be considered as a Martinmas Bargain, if the price be then paid or bear Annual rent from that term, would not hold unless it were so provided. Stuart Answers to Direct Douts. 50. Division of the Duty of Lands betwixt Buyer and Seller.